



Office of the Legislative Auditor

State of Montana

Report to the Legislature

April 1991

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 1990

Department of Public Service Regulation

This report contains an unqualified opinion on the department's financial schedules and five recommendations. Issues addressed in the report include:

- ▶ Travel documentation.
- ▶ Cash collection controls.
- ▶ Natural gas and electrical standards.
- ▶ Fund classification.
- ▶ Unrecorded operating budgets.

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FINANCIAL-COMPLIANCE AUDITS

Financial-compliance audits are conducted by the Office of the Legislative Auditor to determine if an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations which could have a significant financial impact. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States General Accounting Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) certificates.

The Single Audit Act of 1984 and OMB Circular A-128 require the auditor to issue certain financial, internal control, and compliance reports regarding the state's federal financial assistance programs, including all findings of noncompliance and questioned costs. This individual agency audit report is not intended to comply with the Single Audit Act of 1984 or OMB Circular A-128 and is therefore not intended for distribution to federal grantor agencies. The Office of the Legislative Auditor issues a statewide biennial Single Audit Report which complies with the reporting requirements listed above. The Single Audit Report for the two fiscal years ended June 30, 1989 has been issued. Copies of the Single Audit Report can be obtained by contacting:

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April 1991

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON
Operations and EDP Audit

JAMES GILLETT
Financial-Compliance Audit

JIM PELLEGRINI
Performance Audit

The Legislative Audit Committee
of the Montana State Legislature:

This is our financial-compliance audit report on the Department of Public Service Regulation for the two fiscal years ended June 30, 1990. Included in this report are recommendations to improve travel documentation and cash collection controls, adopt natural gas and electrical standards, and record financial activity and operating budgets on the state's accounting system in accordance with state law. The department's written response to the audit recommendations is included in the back of the audit report.

We thank the commissioners and their staff for their assistance and cooperation throughout the audit.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Scott A. Seacat", written over a horizontal line.

Scott A. Seacat
Legislative Auditor



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Office of the Legislative Auditor

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 1990

Department of Public Service Regulation

Members of the audit staff involved in this audit were Pearl M. Allen, Christine M. Damuth, Wayne D. Guazzo, Catherine L. Scarff, and Cindy D. Susott.

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Elected and Administrative Officials

Public Service Commission

	<u>Term Expires</u>
Howard Ellis, Chairman	January 1993
Danny Oberg, Vice Chairman	January 1995
John Driscoll	January 1993
Wallace W. Mercer	January 1993
Bob Anderson	January 1995

Administrative Officials

Madeline L. Cottrill	Administrator Centralized Services Division
Robin McHugh	Administrator Legal Division
Wayne Budt	Administrator Transportation Division
Dan Elliott	Administrator Utility Division

Summary of Recommendations

The listing below serves as a means of summarizing the recommendations contained in the report, the department's response thereto, and a reference to the supporting comments.

<u>Recommendation #1</u>	We recommend the department establish procedures to ensure it reimburses only properly supported and allowable travel expenses in accordance with state law and policy.	4
	Agency Response: Concur. See page 24.	
<u>Recommendation #2</u>	We recommend the department maintain adequate controls for safeguarding receipts in compliance with state policy.	6
	Agency Response: Concur. See page 24.	
<u>Recommendation #3</u>	We recommend the department:	
	A. Adopt natural gas and electrical standards, including fees to test compliance with the standards, in accordance with state law; or	7
	B. Seek legislation to exempt the setting of natural gas and electrical standards from the requirements of the Montana Administrative Procedure Act.	7
	Agency Response: Do not concur. See page 24.	
<u>Recommendation #4</u>	We recommend the department seek budget authority to account for reimbursable travel expenditures in the Special Revenue Fund.	8
	Agency Response: Concur. See page 25.	
<u>Recommendation #5</u>	We recommend the department record approved operating budgets on SBAS in accordance with state law.	9
	Agency Response: Concur. See page 26.	

Introduction

Introduction

We performed a financial-compliance audit of the Department of Public Service Regulation for the two fiscal years ended June 30, 1990. The objectives of the audit were to:

1. Determine if the department complied with applicable laws and regulations.
2. If necessary, make recommendations for improvement in the administrative and accounting controls of the department.
3. Determine if the department's financial schedules present fairly the results of operations for the two fiscal years ended June 30, 1990.

The previous department audit for the two fiscal years ended June 30, 1988 did not contain any audit recommendations.

This report contains five recommendations to the department. These recommendations address areas where the department can improve internal controls and compliance with laws and regulations. In accordance with section 5-13-307, MCA, we analyzed and disclosed the costs, if significant, of implementing the recommendations contained in this report. Other areas of concern not having a significant effect on the successful operations of the department are not included in this report, but have been discussed with management.

Background

The Department of Public Service Regulation was created by the Executive Reorganization Act of 1971 and operates under the direction of the Public Service Commission. The commission consists of five voting members who are elected on a district basis and serve a term of four years. After each general election, one of the commissioners is elected chairman by the commission.

The department is responsible for the regulation of public utilities, motor carriers, railroads, and pipelines within the state and also performs safety inspections of the same activities, except

Introduction

for motor carriers. The department's responsibility is to assure the public safe, adequate, and economical utility and transportation service at just and reasonable rates.

The commission serves as the department head. The department was authorized to employ 46 full-time equivalent personnel in fiscal years 1988-89 and 1989-90. The department is divided into the following four divisions.

1. The Utility Division exercises general control over public utilities, including rate determination and safety standards.
2. The Transportation Division exercises general supervisory control over the activities of motor carriers and railroads.
3. The Legal Division advises the commission on matters requiring a legal interpretation or opinion and represents the commission in legal proceedings.
4. The Centralized Services Division performs the department's administrative support functions.

Findings and Recommendations

Travel Documentation

Department personnel perform railroad and pipeline safety inspections, utility and transportation compliance audits, and attend hearings and conferences. Travel expenses resulting from these activities are processed with the department payroll through the state's central payroll system. We noted the department processes travel expense vouchers which are not properly completed. Processing improperly completed vouchers increases the department's risk of paying claims which are not supported, authorized, or allowable under state law and policy.

Section 2-18-511, MCA, requires state employees engaged in travel to periodically submit a schedule of expenses and amounts claimed for reimbursement. The ARM and instructions which accompany blank travel expense voucher forms provide specific guidelines for completing the form. This includes requiring employee signature and supervisor approval. Sections 2-18-501 and 2-18-502, MCA, outline the criteria for determining the allowability of meal and lodging reimbursements. Travel times must be documented for the department to determine allowability of travel expenses in accordance with statute.

The department incurred travel expenditures of \$62,323 and \$88,973 in fiscal years 1988-89 and 1989-90, respectively. We reviewed 22 travel expense vouchers processed during four pay periods. As described below, we noted ten travel expense vouchers totalling \$2,004 did not meet the documentation criteria outlined in state law and policy. Some vouchers contained multiple errors.

1. Six expense vouchers totalling \$1,355 were not signed by either the employee, the employee's supervisor, or both. State policy requires the employee and employee's supervisor to sign each voucher to document the expenses claimed were authorized and allowable.
2. Five expense vouchers claiming \$87 for meals did not document the time employee travel began and ended. Without documenting the departure and return times, the department cannot demonstrate the employees were in travel status for all meals claimed.

Findings and Recommendations

3. Three claims for lodging and meals totalling \$13 were not allowable because the employees were not in a travel status during the time period in which the expenses were claimed.

Department personnel stated that due to time constraints imposed by the central payroll system, Centralized Services personnel do not ensure travel claims are properly completed prior to processing. In addition, individual supervisors are not always available to review and approve the claims while the payroll is being processed. This sometimes allows improper and unauthorized travel claims to be paid. To ensure only proper and authorized travel claims are paid, the department personnel responsible for processing the claims should not process claims for payment unless the claims are properly completed and approved.

Recommendation #1

We recommend the department establish procedures to ensure it reimburses only properly supported and allowable travel expenses in accordance with state law and policy.

Cash Collection Controls

The department collects fees for processing applications, permits, and annual reports filed with the Transportation Division. The department collected \$1,461,134 and \$1,483,976 from these activities in fiscal years 1988-89 and 1989-90, respectively. Most of the department's revenue is received from October through December. The department received \$1,075,201 during these months in fiscal year 1989-90, with the average daily collection being \$18,224. The individual checks received vary in amount from \$5 to several thousands of dollars. We observed weaknesses in the department's control procedures for safeguarding receipts.

Section 2-1210 of the Montana Operations Manual (MOM), requires state agencies collecting revenues to establish and

Findings and Recommendations

maintain a system of controls over collections and deposits. The MOM contains specific guidelines for establishing control procedures for cash collections. For example, each agency should secure cash collections at all times and ensure that no employee performs incompatible functions. Incompatible functions place an employee in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

We noted the following weaknesses in the department's control procedures and issues of noncompliance with state policies.

1. We noted several instances where receipts were left unattended and unsecured at the reception desk and in the centralized services area. All department employees and the general public have access to the area around the reception desk.
2. The accounting specialist prepares the deposit ticket, reconciles the cash collection log to the cash prepared for deposit, and deposits the cash with the State Treasurer. Neither the accounting documents nor the deposit tickets that the accounting specialist prepares are reviewed or approved by a supervisor. Because the reconciliation and review procedures are not performed by an employee who does not have custody of the cash, the accounting specialist is placed in a position to conceal loss or theft of receipts.
3. The department's safe is located in a hallway and left unlocked during work hours. The location of the safe prevents the employee who is responsible for safeguarding the cash from monitoring access. When employees and visitors could have inappropriate access to the safe, the potential exists for the daily cash collections to be stolen prior to deposit.

Department personnel indicated the individuals involved in processing applications need information from both the applications and attached checks. We suggest the following control system changes which could reduce the risk of loss or theft of daily receipts, but still provide the necessary information to employees who process applications.

1. Secure receipts in a locked box.

Findings and Recommendations

2. Transfer the cash collection log directly to an employee not otherwise involved in the control system. This employee should:
 - a. Reconcile the cash collection log to the related accounting document and deposit ticket to ensure all receipts are recorded and deposited.
 - b. Review the accounting document and deposit ticket for proper coding and approve the documents for processing.
 - c. Perform periodic reasonableness checks on the amount of revenue recorded on the Statewide Budgeting and Accounting System by calculating the amount of revenue which should have been recorded based upon the number of applications processed.

We observed, at the end of the audit, that department personnel began implementing the above suggestions.

Recommendation #2

We recommend the department maintain adequate controls for safeguarding receipts in compliance with state policy.

Natural Gas and Electrical Standards

Section 69-3-108, MCA, which was originally enacted in 1913, requires the department to develop product and service standards for natural gas and electrical utilities. It also requires the department to establish fees for testing compliance with these standards. The department developed product and service standards, but did not adopt the standards or establish fees for testing compliance with the standards in the Administrative Rules of Montana (ARM). A department official said the standards have not been adopted in the ARM because they are included in each utility's tariff agreement. Tariff agreements are schedules or catalogs which contain rate schedules and operating rules that apply specifically to individual utility companies.

Findings and Recommendations

We reported the department had not adopted natural gas and electrical standards in our audits for the two fiscal years ended June 30, 1984 and 1986. During our audit for the two fiscal years ended June 30, 1988, we noted the department was in the process of developing standards and had partially implemented the recommendation, so we did not address the issue in the audit report. Although the department concurred with the prior recommendations, department personnel take the position that these standards were adopted in the ARM by reference to tariff agreements and that the adoption of rules is not required.

As noted above, section 69-3-108, MCA, requires the department to adopt standards. Section 2-4-102(10), MCA, defines "rule" as "each agency . . . standard . . . that implements, interprets, or prescribes law or policy . . . of an agency." Section 2-4-305(7), MCA, provides that a rule is not valid unless adopted in substantial compliance with the Montana Administrative Procedure Act (MAPA). Because state law requires standards be established by rule, the department should adopt, by rule, the standards as required by section 69-3-108, MCA. If the department believes standards adopted in the tariff agreements result in uniformity and public protection, and that the adoption of rules under MAPA is not required, the department should seek legislation to amend state law to exempt the setting of standards from the requirements of MAPA.

Recommendation #3

We recommend the department:

- A. Adopt natural gas and electrical standards, including fees to test compliance with the standards, in accordance with state law; or**
- B. Seek legislation to exempt the setting of natural gas and electrical standards from the requirements of the Montana Administrative Procedure Act.**

Findings and Recommendations

Fund Classification

The department performs audits of utility companies to verify the reasonableness of rates charged by those companies. These utility companies reimburse the department for the travel costs incurred to perform the audit. The department recorded \$13,584 and \$17,176 of travel expenditures and the related reimbursements in the Internal Service Fund, rather than the Special Revenue Fund, during fiscal years 1988-89 and 1989-90, respectively.

Section 17-1-102(4), MCA, requires state agencies to maintain their accounting records in accordance with generally accepted accounting principles (GAAP). According to this law, Internal Service Funds should be used to account for goods or services provided by one governmental agency to another on a cost-reimbursement basis. Special Revenue Funds should be used to account for the proceeds of specific revenue sources that are restricted to expenditure for specified purposes. Public utilities are not governmental entities; therefore, the department should record travel expenditures and reimbursements resulting from utility company audits in the Special Revenue Fund, rather than in the Internal Service Fund.

Department personnel stated that budget authority for this travel is appropriated in the Internal Service Fund, so that is where they record the activity. The department should work with the Office of Budget and Program Planning to seek budget authority to record these travel expenditures in the Special Revenue Fund.

Recommendation #4

We recommend the department seek budget authority to account for reimbursable travel expenditures in the Special Revenue Fund.

Compliance with Operating Budget Requirements

According to House Bill 100, Laws of 1989 and House Bill 2, Laws of 1987, "Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority." For executive branch agencies, the Office of Budget and Program Planning is the approving authority. The house bills also state each operating budget must include expenditures for each program detailed at least by the categories of personal services, operating expenses, equipment, benefits and claims, grants, transfers, and local assistance. The house bills require the department to record this operating budget and any approved changes on the Statewide Budgeting and Accounting System (SBAS).

Department personnel recorded the department's total spending authority on SBAS. However, personnel did not allocate the authority on SBAS in accordance with the department's approved operating budgets, as required by law, for fiscal years 1988-89 and 1989-90. They indicated they were unaware of the statutory requirements and the procedures to follow. Department personnel said they monitored expenditure and budget activity manually to ensure expenditures were made in substantial compliance with the department's approved operating budget. Department personnel indicated they recorded the operating budget on SBAS for fiscal year 1990-91 so they could monitor compliance with the approved operating budget more efficiently.

Recommendation #5

We recommend the department record approved operating budgets on SBAS in accordance with state law.

Independent Auditor's Report & Agency Financial Schedules

Summary of Independent Auditor's Report

Summary of Independent Auditor's Report

The financial schedules are prepared from the Statewide Budgeting and Accounting System without adjustments for errors noted during the audit. The independent auditor's report issued on the financial schedules contained in this report is intended to convey to the reader the degree of reliance which can be placed on the amounts presented.

We issued an unqualified opinion on the Schedules of Changes in Fund Balances, Schedule of Budgeted Revenue - Estimate and Actual, and Schedule of Budgeted Program Expenditures by Object and Fund - Budget and Actual for the two fiscal years ended June 30, 1990. This means the financial schedules presented are fairly stated in all material respects and the user may place reliance on the information presented.

Office of the Legislative Auditor

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LEGAL COUNSEL:
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DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON
Operations and EDP Audit

JAMES GILLET
Financial-Compliance Audit

JIM PELLEGRINI
Performance Audit

INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee
of the Montana State Legislature:

We have audited the financial schedules of the Department of Public Service Regulation for each of the two years ending June 30, 1989 and 1990, as shown on pages 14 through 19. These financial schedules are the responsibility of the department's management. Our responsibility is to express an opinion on these financial schedules based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 1 to the financial schedules, the department's financial schedules are prepared in accordance with state accounting policy. Accordingly, the accompanying financial schedules are not intended to present the financial position and results of operations in conformity with generally accepted accounting principles.

In our opinion, the financial schedules referred to above present fairly, in all material respects, the results of operations and changes in fund balances of the Department of Public Service Regulation for the two years ending June 30, 1989 and 1990, in conformity with the basis of accounting described in Note 1.

Respectfully submitted,

A handwritten signature in cursive script that reads "James Gillett".

James Gillett, CPA
Deputy Legislative Auditor

January 18, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
SCHEDULE OF CHANGES IN FUND BALANCES
FOR THE TWO FISCAL YEARS ENDED JUNE 30, 1990

	<u>General Fund</u>	<u>Special Revenue Funds</u>	<u>Internal Service Fund</u>
FUND BALANCE: July 1, 1988	\$ <u>0</u>	\$ <u>80,195</u>	\$ <u>5,000</u>
ADDITIONS:			
<u>Fiscal Year 1988-89</u>			
Budgeted Revenue	1,461,134	18,457	13,584
Prior Year Revenue Adjustments	(24)		
Direct Entries to Fund Balance	80,219 ¹		
Support From State of Montana	173,596		
<u>Fiscal Year 1989-90</u>			
Budgeted Revenue	1,483,976	21,780	17,176
Prior Year Revenue Adjustments	1,506	495	
Support From State of Montana	202,905		
Total Additions	<u>3,403,312</u>	<u>40,732</u>	<u>30,760</u>
REDUCTIONS:			
<u>Fiscal Year 1988-89</u>			
Budgeted Expenditures	1,662,823	18,457	13,584
Prior Year Expenditure Adjustments	52,102	30	
Direct Entries to Fund Balance		80,219 ¹	
<u>Fiscal Year 1989-90</u>			
Budgeted Expenditures	1,683,402	21,780	17,176
Prior Year Expenditure Adjustments	4,985	(10)	
Total Reductions	<u>3,403,312</u>	<u>120,476</u>	<u>30,760</u>
FUND BALANCE: June 30, 1990	\$ <u>0</u>	\$ <u>451</u>	\$ <u>5,000</u>

¹See note 5.

This schedule is prepared from the Statewide Budgeting and Accounting System. Additional information is provided in the notes to the financial schedules on pages 17 through 19.

DEPARTMENT OF PUBLIC SERVICE REGULATION
SCHEDULE OF BUDGETED REVENUE - ESTIMATE AND ACTUAL
FOR THE TWO FISCAL YEARS ENDED JUNE 30, 1990

	Licenses and <u>Permits</u>	Charges for <u>Services</u>	Fines & <u>Forfeits</u>	Federal Indirect Cost <u>Recoveries</u>	<u>Federal</u>	<u>Total</u>
<u>Fiscal Year 1989-90</u>						
GENERAL FUND						
Estimated Revenue	\$1,860,000	\$37,400	\$ 100			\$1,897,500
Actual Revenue	<u>1,450,285</u>	<u>33,691</u>	<u>0</u>			<u>1,483,976</u>
Collections Over (Under) Estimate	\$ <u>(409,715)</u>	\$ <u>(3,709)</u>	\$ <u>(100)</u>			\$ <u>(413,524)</u>
SPECIAL REVENUE FUND						
Estimated Revenue				\$ 400	\$26,407 ¹	\$ 26,807
Actual Revenue				<u>238</u>	<u>21,542</u>	<u>21,780</u>
Collections Over (Under) Estimate				\$ <u>(162)</u>	\$ <u>(4,865)</u>	\$ <u>(5,027)</u>
INTERNAL SERVICE FUNDS						
Estimated Revenue		\$20,000				\$ 20,000
Actual Revenue		<u>17,176</u>				<u>17,176</u>
Collections Over (Under) Estimate		\$ <u>(2,824)</u>				\$ <u>(2,824)</u>
<u>Fiscal Year 1988-89</u>						
GENERAL FUND						
Estimated Revenue	\$1,300,000	\$41,738	\$ 100			\$1,341,838
Actual Revenue	<u>1,427,215</u>	<u>33,919</u>	<u>0</u>			<u>1,461,134</u>
Collections Over (Under) Estimate	\$ <u>127,215</u>	\$ <u>(7,819)</u>	\$ <u>(100)</u>			\$ <u>119,296</u>
SPECIAL REVENUE FUND						
Estimated Revenue				\$1,200	\$ 35,134 ¹	\$ 36,334
Actual Revenue				<u>274</u>	<u>18,183</u>	<u>18,457</u>
Collections Over (Under) Estimate				\$ <u>(926)</u>	\$ <u>(16,951)</u>	\$ <u>(17,877)</u>
INTERNAL SERVICE FUNDS						
Estimated Revenue		\$15,000				\$ 15,000
Actual Revenue		<u>13,584</u>				<u>13,584</u>
Collections Over (Under) Estimate		\$ <u>(1,416)</u>				\$ <u>(1,416)</u>

¹See note 6.

This schedule is prepared from the Statewide Budgeting and Accounting System. Additional information is provided in the notes to the financial schedules on pages 17 through 19.

DEPARTMENT OF PUBLIC SERVICE REGULATION
SCHEDULE OF BUDGETED PROGRAM EXPENDITURES
BY OBJECT AND FUND - BUDGET AND ACTUAL
FOR THE TWO FISCAL YEARS ENDED JUNE 30, 1990

	<u>Public Service Regulation Program</u>	
	<u>FY 1989-90</u>	<u>FY 1988-89</u>
PERSONAL SERVICES		
Salaries	\$1,139,472	\$1,112,466
Hourly Wages		935
Employee Benefits	<u>232,864</u>	<u>232,456</u>
Total	<u>1,372,336</u>	<u>1,345,857</u>
OPERATING EXPENSES		
Other Services	57,888	54,496
Supplies & Materials	22,409	22,700
Communications	61,251	67,323
Travel	88,973	62,713
Rent	36,274	36,875
Repair & Maintenance	16,507	14,023
Other Expenses	<u>20,809</u>	<u>19,025</u>
Total	<u>304,111</u>	<u>277,155</u>
EQUIPMENT AND INTANGIBLE ASSETS		
Equipment	40,721	65,752
Intangible Assets	<u>5,190</u>	<u>6,100</u>
Total	<u>45,911</u>	<u>71,852</u>
TOTAL PROGRAM EXPENDITURES	<u>\$1,722,358</u>	<u>\$1,694,864</u>
GENERAL FUND		
Budgeted	\$1,861,764	\$1,693,166
Actual	<u>1,683,402</u>	<u>1,662,823</u>
Unspent Budget Authority	<u>\$ 178,362</u>	<u>\$ 30,343</u>
SPECIAL REVENUE FUND		
Budgeted	\$ 26,407 ¹	\$ 35,134 ¹
Actual	<u>21,780</u>	<u>18,457</u>
Unspent Budget Authority	<u>\$ 4,627</u>	<u>\$ 16,677</u>
INTERNAL SERVICE FUNDS		
Budgeted	\$ 20,000	\$ 15,000
Actual	<u>17,176</u>	<u>13,584</u>
Unspent Budget Authority	<u>\$ 2,824</u>	<u>\$ 1,416</u>

¹See note 6.

This schedule is prepared from the Statewide Budgeting and Accounting System. Additional information is provided in the notes to the financial schedules on pages 17 through 19.

Notes to the Financial Schedules

For the Two Fiscal Years Ended June 30, 1990

1. Summary of Significant Accounting Policies

Basis of Accounting

The Department of Public Service Regulation uses the modified accrual basis of accounting, as defined by generally accepted accounting principles, for its Governmental Funds. In applying the modified accrual basis, the department records:

Revenues when it receives cash or when receipts are measurable and available to pay current period liabilities.

Expenditures for valid obligations when the department incurs the related liability and it is measurable.

The following additional items are considered valid obligations or expenditures under state accounting policy:

- The entire budgeted service contract even though the department received the services in a subsequent fiscal year.
- Goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end.
- Equipment ordered with a purchase order before fiscal year-end.

State accounting policy also requires the department to record the cost of employees' annual leave and sick leave when used or paid.

The Department of Public Service Regulation uses accrual basis accounting for the Proprietary Fund. Under the accrual basis, the department records revenues in the accounting period earned if measurable; it records expenses in the period incurred, if measurable.

Notes to the Financial Schedules

Basis of Presentation

The financial schedules are prepared from the Statewide Budgeting and Accounting System without adjustment. Accounts are organized in funds according to state law. The department uses the following funds.

Governmental Funds

General - to account for all financial resources except those required to be accounted for in another fund.

Special Revenue Fund - to account for proceeds of specific revenue sources legally restricted to expenditures for specific purposes. The department uses the Special Revenue Fund to account for activity related to its federal financial assistance programs.

Proprietary Fund

Internal Service Fund - to account for providing goods or services to other agencies or departments on a cost-reimbursement basis. The department accounts for travel expenses to audit out-of-state utilities and the utilities' reimbursements of these travels expenses in the Internal Service Fund.

2. Annual and Sick Leave

Employees at the department accumulate both annual and sick leave. The department pays employees for 100 percent of unused annual and 25 percent of unused sick leave credits upon termination. Accumulated unpaid liabilities for annual and sick leave are not reflected in accompanying financial schedules. The department absorbs expenditures for termination pay in its annual operational costs. At June 30, 1989 and at June 30, 1990, the department had a liability of \$109,682 and \$139,587, respectively.

3. Pension Plan

Employees are covered by the Montana Public Employees' Retirement System (PERS). The department's contribution to PERS was \$79,223 in fiscal year 1988-89 and \$70,522 in fiscal year 1989-90.

4. General Fund Balance

The General Fund is a statewide fund. Agencies do not have a separate General Fund since their only authority is to pay obligations from the statewide General Fund within their appropriation limits. Thus, on an agency's schedules, the General Fund beginning and ending fund balance will always be zero.

5. Direct Entry to Fund Balance

During the June 1986 Special Session, the legislature enacted House Bill 45 which provided funding for the department in the Special Revenue Fund for fiscal year 1986-87 through fees levied on regulated utility companies. The 1987 Legislature continued this fee, which is collected by the Montana Department of Revenue, but appropriated the funds for Department of Public Service Regulation operations from the General Fund. As a result, the department transferred the related fund balance of \$79,231 from the Special Revenue Fund to the General Fund during fiscal year 1988-89.

6. Special Revenue Fund Budget Authority

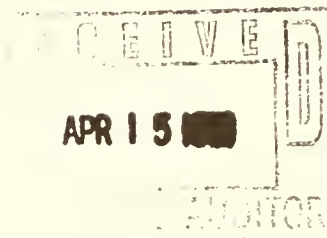
The Schedule of Budgeted Program Expenditures shows budget authority which exceeds actual expenditures in the Special Revenue Fund. The department did not receive the level of federal funding anticipated in the Special Revenue Fund, partly because federal funding of the Railroad Safety Program was discontinued as of September 30, 1988. The legislature continued the program by replacing the federal funds with General Fund moneys. This also caused estimated federal revenues to exceed actual federal revenues on the Schedule of Budgeted Revenue.

Agency Response

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620-2601
Telephone: (406) 444-6199

Howard Ellis, Chairman
Danny Oberg, Vice Chairman
Bob Anderson
John Driscoll
Wallace W. "Wally" Mercer



April 15, 1991

James Gillett
Deputy Legislative Auditor
State Capitol
Helena, MT 59620

Dear Mr. Gillett:

Enclosed please find PSC's response to your final report on the audit of the Department of Public Service Regulation. Also with this response, we are returning the 2 copies of the report per your request.

We look forward to the meeting with you and the Legislative Audit Committee.

Sincerely,

Madeline L. Cottrill
Administrator
Centralized Services Division

Enclosures

AGENCY RESPONSE
LEGISLATIVE AUDIT

APR 15 1981

1. TRAVEL DOCUMENTATION

RECOMMENDATION #1: That the department establish procedures to ensure it reimburses only properly supported and allowable travel expenses in accordance with state law and policy.

RESPONSE:

Concur. The Commission has established procedures to ensure it reimburses only properly supported and allowable travel expenses in accordance with state law and policy. The established procedures have been conveyed to all PSC staff.

2. CASH COLLECTION CONTROLS

RECOMMENDATION #2: That the department maintain adequate controls for safeguarding receipts in compliance with state policy.

RESPONSE:

Concur. (1) The Commission has purchased two lock boxes for securing the daily receipts and have implemented procedures for their use;
(2) New procedures have been implemented for reconciling cash collection and review of the accounting documentation and deposit ticket for proper coding and approval for processing and;
(3) The Commission is in the process of implementing a new transfer receipt computer program. The receipt information will be input by the receptionist. The program will allow accounting staff to verify monthly that the revenue received by the Commission is the same that is being recorded on the Statewide Budgeting and Accounting System (SBAS).

3. NATURAL GAS & ELECTRICAL STANDARDS

RECOMMENDATION #3: (a) That the department adopt natural gas and electrical standards, including fees to test compliance with the standards, in accordance with state law; or

(b) Seek legislation to exempt the setting of natural gas and electrical standards from the requirements of the Montana Administrative Procedure Act.

RESPONSE:

The PSC is of the opinion that it is presently complying with recommendation 3(a), which states: "Adopt natural gas and electrical standards; including fees to test compliance with the standards, in accordance with state law."

The PSC is of the opinion that tariffs on file for natural gas and electric utilities prescribe lawful rates for each public utility, and relevant standards by which utility service is provided. Each utility has characteristics which need to be taken into account in individual utility tariffs. For example, a measure of the probability of an outage is referred to as the loss of load probability. Different characteristics in each utility system mean that each utility's loss of load probability is different. Theoretically the PSC could, by rule, specify a set number of outages per year for each utility customer in Montana. The number, however, would be either so broad so as to be meaningless, or it would unnecessarily penalize utilities who have, for example, older (and more prone to fail) equipment, compared to other utilities.

Naturally, the PSC does not condone wide variances in the provision of utility service in one area of the state versus another. On the other hand, some variances are not only likely, but can be in the best interest of rate payers. Generic statewide standards are, therefore, not always advisable. The PSC believes that lawful implementation of standards for each individual utility is lawfully accomplished by tariff (see the attached legal correspondence).

The PSC has implicitly adopted a fee of \$0 for investigating customer inquiries and complaints which pertain to the standards by which electric and gas service are provided. For example, if a utility customer complains to the PSC that he or she has suffered unusual service outages, the PSC will investigate on behalf of that customer without assessing a charge. In like manner, the PSC does not expect a utility to assess a charge if it is called upon to assist in such an investigation, which is likely. The PSC believes that the public interest is well served by its present practice, and therefore believes that it is fulfilling the intentions of Section 69-3-108, MCA.

Finally, the PSC regrets any inconvenience which may have resulted in previous audits, if they arose from an incomplete explanation of the above mentioned factors. Such was certainly not the PSC's intention.

4. FUND CLASSIFICATION

RECOMMENDATION #4: That the department seek budget

authority to account for reimbursable travel expenditures in the Special Revenue Fund.

RESPONSE:

Concur. The Commission will work with the Office of Budget and Program Planning to seek legislation to re-classify our Internal Revenue Fund as a Special Revenue Fund.

5. UNRECORDED OPERATING BUDGET

RECOMMENDATION #5: That the department record approved operating budgets on SBAS in accordance with state law.

RESPONSE:

Concur. The Commission is presently recording its approved operating budget on SBAS in accordance with state law for fiscal year 1990-1991 and will continue to do so for future budgets.



PUBLIC SERVICE COMMISSION

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April 1, 1991

John Northey
Chief Legal Counsel
Office of Legislative Auditor
Room 135, State Capitol
Helena, MT 59620

RE: 1991 Legislative Audit of PSC Section 69-3-108, MCA, Standards for Public Utility Products and Service

Dear Mr. Northey:

Legislative auditor staff and PSC staff have had several discussions concerning PSC implementation of Section 69-3-108, MCA, standards for public utility products and service. There remains a difference of opinion as to how the PSC can lawfully implement this code section.

Your office takes the position that there is a requirement that the PSC implement Section 69-3-108, MCA, by the adoption of administrative rules. The only legal reference for this position is "Title 2, chapter 4, part 3, MCA." See, "Findings and Recommendations," Legislative Auditor, p. 3.

However, neither Title 2, chapter 4, part 3, MCA, nor any other provision in MAPA provides, in relevant part, requirements that agencies make rules or authority for agencies to make rules. MAPA is, in relevant part, purely procedural -- if there is, by law, a rulemaking requirement, the procedure to follow is MAPA. In fact, MAPA specifically disclaims a grant of rulemaking authority. See, Section 2-4-301, MCA.

Furthermore, MAPA expressly disclaims any limitation or repeal of requirements imposed by statute or otherwise recognized by law. See, Section 2-4-107, MCA. Therefore, even if MAPA imposes substantive rulemaking requirements, which it does not, historic PSC implementation existing at the time MAPA was adopted (circa. 1971) would not be affected. If the PSC's implementation of Section 69-3-108, MCA, was by a lawful means other than rule, it follows that MAPA would not affect that means.

It is my opinion that for there to be a legal requirement that Section 69-3-108, MCA, be implemented by rule, one must find that requirement in Section 69-3-108, MCA, or other stat-

utes of the PSC. In review of these statutes, particularly Section 69-3-108, MCA, there is no such mandate for rulemaking.

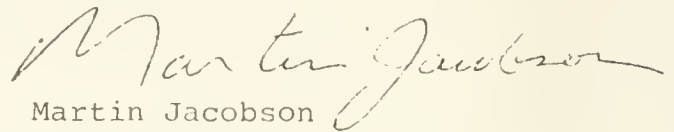
Section 69-3-108, MCA, merely requires the PSC to implement. Rulemaking is not referenced in the statute at all. In such case the PSC has the discretion to implement the statute in any way it deems proper.

It is my opinion that one lawful means of implementing a statute is by order. The PSC can by order implement law as effectively or more effectively as it can by rule.

I find no requirement in any statute that imposes a rulemaking mandate on the PSC in regard to Section 69-3-108, MCA. It is my opinion that the PSC can, therefore, lawfully implement Section 69-3-108, MCA, by order (tariffs in this case).

I therefore ask that your office reconsider its findings and recommendations on this topic. Also, I hope it goes without saying, that I am interested in your views and any reference to legal authority that will correct my opinion if it is wrong. I appreciate your efforts. Thank you.

Sincerely,



Martin Jacobson
Staff Attorney

MJ/dc

cc: Jim Pellegrini
Dan Elliott
Dennis Crawford
Robin McHugh

PUBLIC SERVICE COMMISSION

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Howard Ellis, Chairman
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April 8, 1991

John Northey
Chief Legal Counsel
Office of Legislative Auditor
Room 135, State Capitol
Helena, MT 59620

RE: 1991 Legislative Audit of PSC Section
69-3-108, MCA, Standards for Public
Utility Products and Service

Dear Mr. Northey:

Thank you for your continued courtesy and patience and willingness in discussions on this matter. With the utmost respect to you and all persons in the office of the Legislative Auditor, I sincerely remain convinced that the position you folks take is not correct regarding the MAPA legal mandates applying to the PSC in implementation of Section 69-3-108, MCA, Standards for Public Utility Products and Service.

I ask that you reconsider your office's new findings and recommendations regarding its reference, analysis, and conclusions relating to legal mandates in MAPA's Section 2-4-102(10), MCA, defining "rule." It is my opinion that it has missed a fundamental point regarding what constitutes a "rule" under MAPA. It is also my opinion that it continues to apply MAPA to this matter from what is most simply described as the "wrong direction." Hopefully, the following will explain these things.

Your office states that "...state law requires standards be established by rule..." In support of this, your office quotes from Section 2-4-102(10), MCA, a rule is "each agency... standard... that implements, interprets, or prescribes law or

John Northey
April 8, 1991
Page 2

policy... of an agency." However, fundamental to the MAPA definition of "rule," and all theories on administrative rules known to me, is not the words quoted by your office from Section 2-4-102(10), MCA, but the words not quoted -- "of general applicability." See, Section 2-4-102(10), MCA.

The thing that truly distinguishes a "rule" from other manifestations of law in the administrative setting (declaratory rulings and final orders) is not that a "rule" expresses a standard, as both rulings and orders can express standards, but that it expresses a standard or like thing "of general applicability." If some law of an agency applies generally to all persons or entities under its jurisdiction or all persons or entities in a particular category under its jurisdiction, it is a "rule." If it applies to an individual person or entity, it is not a "rule."

On applying MAPA from the "wrong direction," MAPA does not (with a few exceptions not relevant here) compel an agency to do a thing, such as make rules. It merely requires, that if an agency does a thing, such as make rules, it must do so pursuant to MAPA. With all respect, your office appears, in this instance, to say that MAPA requires it to do something by rule. It is my opinion that MAPA simply does not work this way. MAPA applies if an agency decides to implement something by rule by requiring it to do so in the prescribed fashion.

Concerning Section 69-3-108, MCA, the words "rule," "uniform," "general applicability," or terms from which it could unquestionably be inferred that the legislature intended rules do not appear. It would have been, and still would be, a relatively simple matter for the legislature to include a rulemaking requirement in the statute. This has not been done. In the absence of such requirement it is reasonable to conclude that the legislature's silence constitutes permission and discretion in the PSC to implement the statute in the way it sees fit.

John Northey
April 8, 1991
Page 3

Please be assured, I remain interested in your views and any reference to legal authority that will correct my opinion if it is wrong. Thank you.

Sincerely,



Martin Jacobson
Staff Attorney
Public Service Commission

cc: Jim Pellegini
Jim Gillette
Pearl Allen
Dan Elliott
Dennis Crawford
Robin McHugh

P.S. Dan Elliott has just informed me that the PSC final response to the Legislative Auditors' report is due Monday, April 15, 1991. If possible, can you and I agree or agree to disagree sometime early this week? Thanks.

